

Nos. 16-1270 and 16-1271

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RALEIGH WAKE CITIZENS ASSOCIATION; JANNET B. BARNES;
BEVERLEY S. CLARK; WILLIAM B. CLIFFORD; BRIAN FITZSIMMONS;
GREG FLYNN; DUSTIN MATTHEW INGALLS; AMY T. LEE; ERVIN
PORTMAN; SUSAN PORTMAN; JANE C. ROGERS; BARBARA D.
VANDENBERGH; JOHN G. VANDENBERGH; AMY WOMBLE;
PERRY WOODS,

Plaintiffs-Appellants,

v.

WAKE COUNTY BOARD OF ELECTIONS,

Defendant-Appellee.

CALLA WRIGHT; WILLIE J. BETHEL; AMY T. LEE; AMYGAYLE L.
WOMBLE; BARBARA VANDENBERGH; JOHN G. VANDENBERGH;
AJAMU G. DILLAHUNT; ELAINE E. DILLAHUNT; LUCINDA H.
MACKETHAN; WILLIAM B. CLIFFORD; ANN LONG CAMPBELL; GREG
FLYNN; BEVERLEY S. CLARK; CONCERNED CITIZENS FOR AFRICAN-
AMERICAN CHILDREN, d/b/a Coalition of Concerned Citizens for African-
American Children; RALEIGH WAKE CITIZENS ASSOCIATION,

Plaintiffs-Appellants,

v.

WAKE COUNTY BOARD OF ELECTIONS,

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of North Carolina

**APPELLANTS' RESPONSE REQUESTING CONSOLIDATION
OF RELATED APPEALS**

APPELLANTS Calla Wright, et al. (collectively "*Wright* Appellants") and APPELLANTS Raleigh Wake Citizens Association, et al. (collectively "*RWCA* Appellants"), by and through their undersigned counsel, respectfully request that this Court consolidate *Raleigh Wake Citizens Association, et al. v. Wake County Board of Elections*, No. 16-1270 (No. 5:15-cv-00156-D), with the earlier-filed action *Wright, et al. v. Wake County Board of Elections*, No. 16-1271 (No. 5:13-cv-00607-D), on appeal pursuant to Local Rule 12(b). The two appeals involve closely related issues and were consolidated for discovery and trial in district court, and no briefing schedule has yet been issued in either appeal.

PROCEDURAL BACKGROUND

Wright Appellants filed their lawsuit against the State of North Carolina and the Wake County Board of Elections on August 22, 2013. *Wright, et al. v. North Carolina, et al.*, No. 5:13-cv-00607, ECF No. 1 (E.D.N.C.). The lawsuit challenged newly enacted North Carolina Session Law 2013-110, a redistricting plan for the Wake County Board of Education, on Equal Protection grounds under the state and federal constitutions. *Id.*; see also 2013 N.C. Sess. Laws 110. On

March 17, 2014, the district court granted Appellee Wake County Board of Elections' Motion to Dismiss for Failure to State a Claim and former defendant State of North Carolina's Motion to Dismiss for Lack of Subject-Matter Jurisdiction. *Wright*, ECF No. 39. *Wright* Appellants appealed to the Fourth Circuit, which heard oral argument on the appeal on December 10, 2014. On May 27, 2015, the Fourth Circuit reversed the district court's grant of Appellee Wake County Board of Elections' Motion to Dismiss, affirmed the district court's denial of *Wright* Appellants' motion to amend their complaint, and remanded the case to the Eastern District of North Carolina for further proceedings.¹ *Wright*, No. 14-1329, ECF No. 46, at 3, 29 (4th Cir.).

RWCA Appellants filed their lawsuit against the Wake County Board of Elections, state Senator Chad Barefoot, state Senator Philip E. Berger, and state Representative Tim Moore on April 9, 2015. *Raleigh Wake Citizens Ass'n, et al. v. Wake Cnty. Bd. of Elections*, No. 5:15-cv-00156, ECF No. 1 (E.D.N.C.). The lawsuit challenged newly enacted North Carolina Session Law 2015-4, a redistricting plan for the Wake County Board of Commissioners, on Equal Protection grounds under the state and federal constitutions. *Id.*; *see also* 2015 N.C. Sess. Laws 4. The redistricting map enacted for the Wake County Board of Commissioners was identical to the redistricting map enacted two years earlier for

¹ *Wright* Appellants did not appeal the district court's dismissal of former defendant State of See *Wright*, No. 14-1329, ECF No. 46, at 7 n.2 (4th Cir. May 27, 2015).

the Wake County Board of Education and challenged in *Wright*. Compare 2013 N.C. Sess. Laws 110 with 2015 N.C. Sess. Laws 4. On June 5, 2015, following release of the Fourth Circuit's opinion in *Wright*, *RWCA* Appellants voluntarily dismissed named defendants Barefoot, Berger, and Moore and filed an amended complaint. *Raleigh Wake Citizens Ass'n*, ECF Nos. 21, 22; see *Wright*, No. 14-1329, ECF No. 43 (4th Cir.).

On July 17 and July 24, 2015, respectively, *Raleigh Wake Citizens Association* and *Wright* were reassigned to Chief Judge James C. Dever III in the Eastern District of North Carolina. *Wright*, ECF No. 49; *Raleigh Wake Citizens Ass'n*, ECF No. 27. In a scheduling hearing before Judge Dever on October 1, 2015, *Wright* Appellants, *RWCA* Appellants, and Appellee Wake County Board of Elections agreed to consolidate *Wright* and *Raleigh Wake Citizens Association* for discovery and trial. *Wright*, ECF No. 53; *Raleigh Wake Citizens Ass'n*, ECF No. 36. After a three-day bench trial in the consolidated cases December 16-18, 2015, the district court entered judgment for Appellee Wake County Board of Elections on all claims in both cases on February 26, 2016. *Wright*, ECF No. 83; *Raleigh Wake Citizens Ass'n*, ECF No. 65. *Wright* Appellants and *RWCA* Appellants timely filed separate notices of appeal on March 14, 2016, and this Court has since asked all parties in both cases to state their position on whether the two cases

should be consolidated on appeal. *Wright*, ECF No. 84; *Raleigh Wake Citizens Ass'n*, ECF No. 66; *Raleigh Wake Citizens Ass'n*, No. 16-1270, ECF No. 3.

ARGUMENT

Wright and *Raleigh Wake Citizens Association* should be consolidated on appeal in service of the interests of efficiency and justice.

Consolidation of appeals is appropriate “when the parties have filed separate timely notices of appeal” and “when savings of expense and gains of efficiency can be accomplished without sacrifice of justice.” Fed. R. App. P. 3(b); *Chem One, Ltd. v. M/V Rickmers Genoa*, 660 F.3d 626, 642 (2d Cir. 2011) (finding that consolidation of appeals was “both efficient and equitable” where the appeals “ar[ose] from the same conjoined multiparty litigation” and consolidation was unopposed). The Federal Rules of Appellate Procedure “encourage consolidation of appeals whenever feasible.” 1967 Advisory Comm. Note to Fed. R. App. P. 3.

Consolidation is feasible and in the interests of efficiency and justice here because *Wright* and *Raleigh Wake Citizens Association* share common parties, a common nucleus of operative fact, common questions of law, and a common discovery and trial record. The Wake County Board of Elections is the sole active defendant in both cases, eight plaintiffs are common to both cases, and all plaintiffs in both cases share common counsel. Following this Court’s earlier decision in *Wright*, *RWCA* Appellants amended their complaint and voluntarily dismissed

three defendants to conform to this Court's guidance in what all parties recognized was a strikingly similar case. The issues at trial and on appeal in both cases arise from a single redistricting map, first enacted by the North Carolina General Assembly in 2013 for use in electing members to the Wake County Board of Education, as challenged in *Wright*, and separately enacted in 2015 for use in electing members to the Wake County Board of Commissioners, as challenged in *Raleigh Wake Citizens Association*. As a result of this common nucleus of operative fact, the two appeals share common questions of law, as both raise one person, one vote claims under both the North Carolina Constitution and United States Constitution. The two cases were decided in the same opinion by the same district judge following a consolidated trial and discovery period, and because of the level of consolidation and coordination between the two appeals to date, they share a largely common record on appeal.

Therefore, *Wright* Appellants and *RWCA* Appellants agree that consolidation is clearly feasible here, and in the interests of efficiency and justice.

CONCLUSION

For the foregoing reasons, Appellants in both cases jointly and respectfully request that this Court consolidate the related appeals in *Raleigh Wake Citizens Association, et al. v. Wake County Board of Elections*, No. 16-1270 (No. 5:15-cv-

00156-D), and *Wright, et al. v. Wake County Board of Elections*, No. 16-1271 (No. 5:13-cv-00607-D).

Respectfully submitted this 28th day of March, 2016.

/s/ Anita S. Earls

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CERTIFICATE OF SERVICE

I certify that on March 28, 2016, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

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